

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
4.12.601, 4.12.602, 4.12.604, 4.12.606,)
4.12.607, 4.12.608, 4.12.609, 4.12.620,)
4.12.621, and repeal of 4.12.603 and)
4.12.605, relating to fertilizer regulations)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
REPEAL

TO: All Concerned Persons

1. On July 15, 2010, at 10:00 a.m. the Montana Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 303 N. Roberts at Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on July 8, 2010, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; phone: (406) 444-3144; fax: (406) 444-5409; or e-mail: agr@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

4.12.601 GUARANTEED ANALYSIS PLANT NUTRIENTS IN ADDITION TO NITROGEN, PHOSPHATE, AND POTASH (1) Recognized Other plant nutrients in addition to ~~nitrogen, phosphoric acid and potash~~ when mentioned in the labeling shall be registered and guaranteed. Guarantees shall be made on the elemental basis. Sources of the elements guaranteed and proof of availability shall be provided to the department upon request. Except those guarantees for those water soluble nutrients labeled for ready-to-use foliar fertilizers, ready-to-use specialty liquid fertilizers, hydroponic or continuous liquid feed programs and guarantees for potting soil, ~~the~~ minimum percentages which will be considered accepted for registration are as follows:

Element	<u>Minimum</u> <u>Concentration</u> %
Calcium (Ca)	1.00
Magnesium (Mg)	0.50
Sulfur (S)	1.00

Boron (B)	0.02
Chlorine (Cl)	0.10
Cobalt (Co)	0.0005
Copper (Cu)	0.05
Iron (Fe)	0.10
Manganese (Mn)	0.05
Molybdenum (Mo)	0.0005
<u>Nickel (Ni)</u>	<u>0.001</u>
Sodium (Na)	0.10
Zinc (Zn)	0.05

Guarantees or claims for the above listed plant nutrients are the only ones which ~~may~~ will be accepted. Proposed labels and directions for use of the fertilizer shall be furnished with the application for registration upon request. Any of the above listed elements which are guaranteed shall appear in the order listed immediately following guarantees for the primary nutrients of nitrogen, ~~phosphorus~~ phosphate, and ~~potassium~~ potash. When directions for use render the product ineffective (as a fertilizer) the department will not register the product.

(2 a) A warning or caution statement is may be required on the label for any product which contains ~~0.03% or more of boron~~ micronutrients in water soluble form. ~~This statement shall carry the word "WARNING" or "CAUTION" conspicuously displayed, shall state the crop(s) for which the fertilizer is to be used, and state that the use of the fertilizer on any other than those recommended may result in serious injury to the crop(s) when there is evidence that a micronutrient may be harmful to certain crops or where there are unusual environmental conditions.~~

~~(3) Products containing 0.001% or more of molybdenum also require a warning statement on the label. This shall include the word "WARNING" or "CAUTION" and the statement that the application of fertilizers containing molybdenum may result in forage crops containing levels of molybdenum which are toxic to ruminant animals.~~

EXAMPLES OF WARNING OR CAUTION STATEMENTS:

~~Boron:~~

(a i) Directions: Apply this fertilizer at a maximum rate of ~~350 pounds~~ (number of pounds) per acre for ~~Alfalfa or Red Clover~~ seed production (name of crop).

CAUTION: Do not use on other crops. The ~~boron~~ (name of micronutrient) may cause injury to them.

(b ii) ~~Caution~~ CAUTION: Apply this fertilizer at a maximum rate of ~~700 pounds~~ (number of pounds) per acre for ~~Alfalfa or Red Clover~~ seed production (name of crop). Do not use on other crops; the ~~boron~~ (name of micronutrient) may cause serious injury to them.

(e iii) ~~Warning~~ **WARNING:** This fertilizer carries added ~~Borax~~ (name of micronutrient) and is intended for use only on Alfalfa (name of crop). Its use on any other crops or under conditions other than those recommended may result in serious injury to the crops.

~~Molybdenum:~~

(a iv) ~~Caution~~ **CAUTION:** This fertilizer is to be used only on soil which responds to ~~molybdenum~~ (name of micronutrient). Crops high in ~~molybdenum~~ (name of micronutrient) are toxic to grazing animals (ruminants).

(v) **CAUTION:** (Name of micronutrient) is recommended for all crops where (name of micronutrient) may be deficient; however excessive application to susceptible crops may cause damage.

(2) ~~Specialty fertilizer labels containing the following information, if not appearing on the face or display side in a readable and conspicuous form shall occupy at least the upper third of a side of the container and shall be considered the label.~~

~~(a) Net weight~~

~~(b) Brand and grade~~

~~(c) Guaranteed analysis:~~

~~Total Nitrogen (N)%~~

~~.....% Ammoniacal Nitrogen**~~

~~.....% Nitrate Nitrogen**~~

~~.....% Water Insoluble Nitrogen*~~

~~Available Phosphoric Acid (P205)%~~

~~Soluble Potash (K20)%~~

~~Additional Plant nutrients as prescribed by regulation~~

~~**Potential Acidity or Basicitylbs.~~

~~Calcium Carbonate Equivalent per ton.~~

~~(d) Name and address of registrant~~

~~Notes:~~

~~*If claimed or the statement "organic" or "slow acting nitrogen" is used on the label.~~

~~**If claimed.~~

AUTH: 80-10-301, MCA

IMP: 80-10-102, MCA

REASON: During the 2009 legislative session, Montana's Commercial Fertilizer Act was amended to align state regulations more closely to the current national model regulations and to promote uniformity between states. This proposed rule change is to further clarify and update those statutory amendments. Section (2) is being moved to 4.12.604 Labeling for clarity.

FISCAL IMPACT: There will be no fiscal impact for this rule.

4.12.602 GUARANTEES FOR SOIL AMENDMENTS (1) Lime products shall guarantee:

- (a) The minimum percent calcium carbonate equivalent.
- (b) through (2)(c) remain the same.
- (3) Other soil amendments shall guarantee:
 - (a) ~~Quantitatively guarantee active~~ Active ingredients. The department will accept as only an active ingredient only substances that can be quantitatively determined analytically.
 - (b) and (c) remain the same.
 - (d) The department may allow a soil amending ingredient to be listed or guaranteed on the label or labeling if satisfactory supportive data is provided to the department to substantiate the value and usefulness of the soil amending ingredients. The department may rely on outside sources for assistance in evaluating the data submitted.

AUTH: 80-10-301, MCA

IMP: 80-10-204, MCA

REASON: During the 2009 legislative session, Montana's Commercial Fertilizer Act was amended to align state regulations more closely to the current national model regulations and to promote uniformity between states. This proposed rule change is to further clarify and update those statutory requirements.

FISCAL IMPACT: There will be no fiscal impact for this rule.

4.12.604 LABELING (1) The following information, in the format presented, is the minimum required for all fertilizer labels. For packaged products, this information shall either appear on the front or back of the package, occupy at least the upper third of a side of a package, or be printed on a tag and attached to the package. This information shall be in a readable and conspicuous form. For bulk products, this same information in written or printed form shall accompany delivery and be supplied to the purchaser at the time of delivery.

- (a) Net weight
- (b) Brand
- (c) Grade (Provided that the grade shall not be required when no primary nutrients are claimed).

(d) Guaranteed analysis*:

Total Nitrogen (N)**	%
<u>% Ammoniacal Nitrogen</u>	
<u>% Nitrate Nitrogen</u>	
<u>% Water Insoluble Nitrogen</u>	
<u>% Urea Nitrogen</u>	
<u>% (Other recognized and determinable forms of N)</u>	
Available Phosphate (P ₂ O ₅)	%
Soluble Potash (K ₂ O)	%
<u>(Other nutrients, elemental basis)***</u>	<u>%</u>

*Zero guarantees should not be made and shall not appear in statement except in nutrient guarantee breakdowns.

**If chemical forms of N are claimed or required, the form shall be shown. No implied order of the forms of nitrogen is intended.

***As prescribed by regulation 4.12.601.

(e) Sources of nutrients shall be listed below the completed guaranteed analysis statement.

(f) Beneficial substances or compound guarantees shall appear under the heading "Contains Beneficial Substances" or "Contains Beneficial Compounds":

Contains Beneficial Substances

Beneficial Substance..... % or acceptable units

Purpose Statement:

OR

Contains Beneficial Compounds

Beneficial Compound..... % or acceptable units

Purpose Statement:

(g) Name and address of registrant or licensee.

(h) Directions for use for fertilizer distributed to the end user.

(i) For specialty fertilizer, minimum directions for use shall include:

(A) Recommended application rate or rates in units of weight or volume per unit of area coverage (where application rates are given in volume, the label shall provide sufficient information to calculate the application rates by weight); and

(B) Application timing and minimum intervals to apply the product when plants can utilize nutrients; and

(C) The statement "Apply Only as Directed" or a statement of similar designation.

(ii) For all other fertilizers, minimum directions for use shall include at least one of the following:

(A) A statement such as:

Use in accordance with recommendations of a qualified individual or institution, such as, but not limited to, a certified crop advisor, agronomist, crop extension publication, or apply according to recommendations in your approved nutrient management plan; or,

(B) Detailed directions for a specific use.

(4 iii) For slowly available nutrients released plant nutrients-:

(a A) No fertilizer label shall bear a statement that connotes or infers the presence of a slowly available plant nutrient, unless the nutrient or nutrients are identified implies that certain plant nutrients contained in a fertilizer are released slowly over a period of time, unless the slow release components are identified and guaranteed at a level at least 15% of the total guarantee for that nutrient(s).

(b) When a fertilizer label infers or connotes that the nitrogen is slowly available through use of organic, organic nitrogen, ureaform, long lasting or similar terms, the guaranteed analysis must indicate the percentage of water insoluble nitrogen in the material.

~~(c) To supplement (b), it should be established that if a label states the amount of organic nitrogen present in a phrase, such as "25% or the nitrogen from ureaformaldehyde (ureaform)," then the water insoluble nitrogen guarantee must not be less than 60% of the nitrogen so designated.~~

~~Example: 10-6-4 Rose Food~~

~~25% of Nitrogen if Organic~~

~~$10(\text{Total N Guaranteed}) \times .25 (\% \text{ N Claimed as Organic}) \times .60 = 1.5\%$~~

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~~(d) When the water insoluble nitrogen is less than 15% of the total nitrogen, the label shall bear no references to any designations, such as stated in (b).~~

~~(e) The term "Coated Slow Release Fertilizer", or "Coated Slow Release" may be accepted as descriptive of products.~~

~~(f) Further, the above phrases (e) be allowed for any products that can show a testing program substantiating the claim. (Testing under guidance of experiment station personnel, or a recognized reputable researcher, etc.). Water insoluble nitrogen must be guaranteed at the 15% of total nitrogen level as in organic materials.~~

~~(g) Products claiming to be "Coated" or "Slow Release" will be tested without grinding by the most appropriate procedure available to substantiate the claim.~~

(B) Types of products with slow release properties recognized are:

(I) water insoluble, such as natural organics, ureaform materials, ureaformaldehyde products, isobutyridene diurea, oxamide, etc.;

(II) coated slow release, such as sulphur coated urea and other encapsulated soluble fertilizers;

(III) occluded slow release, where fertilizers or fertilizer materials are mixed with waxes, resins, or other inert materials and formed into particles; and

(IV) products containing water soluble nitrogen such as ureaform materials, ureaformaldehyde products, methylenediurea (MDU), dimethylenetriurea (DMTU), dicyanodiamide (DCD), etc. The terms, "water insoluble", "coated slow release", "slow release", "controlled release", "slowly available water soluble", and "occluded slow release" are accepted as descriptive of these products, provided the manufacturer can show a testing program substantiating the claim (testing under guidance of Experiment Station personnel or a recognized reputable researcher acceptable to the department). A laboratory procedure, acceptable to the department for evaluating the release characteristics of the products(s) must also be provided by the manufacturer.

(C) Until more appropriate methods are developed, AOAC International Method 970.04 (15th Edition) is to be used to confirm the coated slow release and occluded slow release nutrients and others whose slow release characteristics depend on particle size. AOAC International Method 945.01 (15th Edition) shall be used to determine the water insoluble nitrogen or organic materials.

AUTH: 80-10-301, MCA

IMP: 80-10-204, MCA

REASON: During the 2009 legislative session, Montana's Commercial Fertilizer Act was amended to align state labeling regulations more closely to the current national model regulations and to promote uniformity between states. This proposed rule change is to further clarify and update those statutory amendments.

FISCAL IMPACT: There will be no fiscal impact for this rule.

4.12.606 DEFINITIONS FOR COMMERCIAL FERTILIZERS (1) As authorized, the department recognizes the ~~names~~ official terms and definitions for commercial fertilizers and soil amendments adopted by the Association of American Plant Food Control Officials.

AUTH: 80-10-205, MCA

IMP: 80-10-205, MCA

REASON: General housekeeping.

FISCAL IMPACT: There will be no fiscal impact for this rule.

4.12.607 INVESTIGATIONAL ALLOWANCES AND OVERALL INDEX VALUE (1) A commercial fertilizer shall be deemed deficient if the analysis of nutrient is below the guarantee by an amount exceeding the values in the following schedule, or if the overall index value of the fertilizer is below 98%*.

Guarantee Percent	Nitrogen Percent (N)	Available Phosphoric Acid Present Phosphate (P ₂ O ₅)	Soluble Potash Percent (K ₂ O)
<u>Investigational Allowance, percent</u>			
4 or less	0.49	0.67	0.41
5	0.51	0.67	0.43
6	0.52	0.67	0.47
7	0.54	0.68	0.53
8	0.55	0.68	0.60
9	0.57	0.68	0.65 <u>0.70</u>
10	0.58	0.69	0.70
12	0.61	0.69	0.79
14	0.63	0.70	0.87

16	0.67	0.70	0.94
18	0.70	0.71	1.01
20	0.73	0.72	1.08
22	0.75	0.72	1.15
24	0.78	0.73	1.21
26	0.81	0.73	1.27
28	0.83	0.74	1.33
30	0.86	0.75	1.39
32 or more	0.88	0.76	1.44

(a) For DAP and MAP the investigational allowance for available phosphate shall be 0.70.

(b) For TSP the investigational allowance shall be 1.53.

(c) For guarantees not listed, calculate the appropriate value by interpolation.

(d) The overall index value is calculated by comparing the commercial value guaranteed with the commercial value found.

*~~Overall index value~~—Example of calculation for a 10-10-10 grade found to contain 10.1% Total Nitrogen (N), ~~10.2~~ 9.4% Available ~~Phosphoric Acid Phosphate~~ (P₂O₅), and 10.1% Soluble Potash (K₂O). Nutrient unit values are assumed to be \$3 per unit N, \$2 per unit P₂O₅, and \$1 per unit K₂O.

10.0 units N	x 3 = 30.0
10.0 units P ₂ O ₅	x 2 = 20.0
10.0 units K ₂ O	x 1 = 10.0
Commercial Value Guaranteed	60.0

10.1 units N	x 3 = 30.3
10.2 <u>9.4</u> units P ₂ O ₅	x 2 = 20.4 <u>18.8</u>
10.1 units K ₂ O	x 1 = <u>10.1</u>
Commercial Value Found	60.8 <u>59.2</u>

$$\text{Overall Index Value} = \frac{59.2}{60.0} \times 100 = 98.6\%$$

$$\frac{59.2}{60.0} \times 100 = 101.3\%$$

(2) Secondary and ~~minor elements~~ micro plant nutrients shall be deemed deficient if the analysis of any element is below the guarantee by an amount exceeding the values in calculated according to the following schedule:

Element	Allowable Deficiency
Calcium	0.2 unit + 5% of guarantee
Magnesium	0.2 unit + 5% of guarantee
Sulfur	0.2 unit + 5% of guarantee
Boron	0.003 unit + 15% of guarantee
Cobalt	0.0001 unit + 30% of guarantee
Molybdenum	0.0001 unit + 30% of guarantee
Chlorine	0.005 unit + 10% of guarantee
Copper	0.005 unit + 10% of guarantee
Iron	0.005 unit + 10% of guarantee
Manganese	0.005 unit + 10% of guarantee
Sodium	0.005 unit + 10% of guarantee
Zinc	0.005 unit + 10% of guarantee

The maximum allowance when calculated in accordance ~~with~~ to the above shall be one unit (~~1%~~ one percentage point).

AUTH: 80-10-301, MCA

IMP: 80-10-206, MCA

REASON: During the 2009 legislative session, Montana's Commercial Fertilizer Act was amended to align state regulations more closely to the current national model regulations and to promote uniformity between states. This proposed rule change is to further clarify and update those statutory amendments.

FISCAL IMPACT: There will be no fiscal impact for this rule.

4.12.608 REPORTING OF FERTILIZER AND FEE SCHEDULES
QUARTERLY REPORTS AND FEE ASSESSMENTS (1) ~~Every manufacturer or person responsible for registering and paying the fees for a commercial fertilizer and/or soil amendment except specialty fertilizers in packages at 10 pounds or less and unmanipulated manures, shall file on or before the 30th calendar day after the end of a month, a monthly statement setting forth the number of tons of each commercial fertilizer and/or soil amendment except specialty fertilizers in packages of 10 pounds or less and unmanipulated manures, distributed in this state during the past month and to whom it was distributed or indicate if no sales or distributions occurred. The manufacturer, the registrant, or the supplier is responsible for paying the assessment fees for all commercial fertilizers and/or soil amendments distributed~~

in this state. The party responsible for supplying the product into the state shall pay the assessment fees and file a quarterly statement on or before the 30th calendar day after the end of each quarter. The quarterly statement must specify the number of tons of each commercial fertilizer and/or soil amendment distributed in this state during the past quarter, and to whom it was distributed. A quarterly statement is required even if no sales or distributions occurred in a particular quarter. Specialty fertilizers and unmanipulated manures are exempt from the quarterly assessment fee and a quarterly report is not required by persons distributing only these products.

(2) Based upon the filed reports, the person responsible ~~to pay~~ for paying the assessment fees on commercial fertilizers and/or soil amendments shall pay the following fees:

(a) remains the same.

(b) inspection fee ~~at~~ of 95 cents per ton for anhydrous ammonia fertilizer distributed;

(c) inspection fee ~~at~~ of 10 cents per ton for a soil amendments distributed ~~and not less than \$5.00 total for reporting periods; when 50 tons or more are distributed during the quarter;~~ and

(d) educational assessment of ~~35~~ 75 cents per ton for all fertilizers excluding specialty fertilizers and soil amendments, in addition to the inspection fees.

(3) In the event the responsible party fails to file the ~~monthly~~ quarterly report within 60 days after the end of the filing period, the department may initiate proceedings to revoke registration of the responsible party's registered fertilizer(s). The failure to file a ~~monthly~~ quarterly report shall be evidence of fraudulent or deceptive practice in the evasion of these rules.

~~(4) In the event the responsible party fails to pay the assessment due 30 days after the end of the reported period the department shall assess a collection fee of 10% of the amount due but not less than \$10.~~

(~~5~~ 4) No responsible party shall be allowed to register or re-register a fertilizer if the fees owing to the department are more than 30 days past due.

AUTH: 80-10-207, MCA

IMP: 80-10-103, 80-10-207, 80-10-211, 80-10-301, MCA

REASON: During the 2009 legislative session, Montana's Commercial Fertilizer Act was amended. This proposed rule is to further clarify and update those statutory amendments. There are no new or increased fees within this proposed rule.

This rule amendment specifically eliminates the requirement for any person distributing a specialty fertilizer to file a quarterly report, instead of exempting only persons distributing only specialty fertilizers less than ten pounds (specifics were not covered in the 2009 legislative bill). This rule amendment will allow for increased department efficiencies and align state regulations more closely to the current national model regulations and promote uniformity between states.

FISCAL IMPACT: There will be no fiscal impact for this rule as it lessens the requirement already in practice.

4.12.609 REPORTS OF NON-FEE PAYING FERTILIZER DEALERS SEMIANNUAL REPORTS (1) ~~Every~~ Each person who distributed commercial fertilizers and/or soil amendments (except specialty fertilizers in packages of 10 pounds or less and unmanipulated manures), ~~who is not responsible for payment of the fees prescribed in 80-10-207(1), MCA, to nonlicensed end users~~ shall file with the department on forms furnished or approved by the department, semiannual statements for the periods ending June 30 and December 31, setting forth the number of net tons of each commercial fertilizer and/or soil amendment (except specialty fertilizers in packages of 10 pounds or less and unmanipulated manures), received during the ~~6th~~ six-month period and the amount of the ending inventory. The reports shall be filed with the department, on forms approved by the department, on/ or before the 30th calendar day of the month following the close of each six-month period. A separate semiannual statement is required for each licensed location. A semiannual statement is required even if no sales or distributions occurred within a six-month period.

(2) remains the same.

AUTH: 80-10-301, MCA

IMP: 80-10-207, 80-10-211, MCA

REASON: During the 2009 legislative session, Montana's Commercial Fertilizer Act was amended. This proposed rule is for general housekeeping and to further clarify and update those statutory amendments. Specifically, this rule amendment eliminates the requirement for persons registering specialty fertilizers greater than ten pounds from filing a 6-month report. This proposed rule will allow for increased department efficiencies and align state regulations more closely to the current national model regulations and promote uniformity between states.

FISCAL IMPACT: There will be no fiscal impact for this rule as it lessens the requirement already in practice.

4.12.620 ADULTERATION OF FERTILIZERS AND SOIL AMENDMENTS BY TRACE METALS (1) and (2) remain the same.

(3) Fertilizers and soil amendments, whether waste-derived or not, that contain guaranteed amounts of phosphates or micronutrients, except as exempted within this section, are adulterated when they exceed the levels of metals established by the following table:

Metals	ppm per 1% of P ₂ O ₅	ppm per 1% of Micronutrients
Arsenic (As)	13	112
Cadmium (Cd)	10	83
<u>Cobalt (Co)</u>	<u>136</u>	<u>2,228*</u>
Lead (Pb)	61	463

<u>Mercury (Hg)</u>	<u>1</u>	<u>6</u>
<u>Molybdenum (Mo)</u>	<u>42</u>	<u>300*</u>
<u>Nickel (Ni)</u>	<u>250</u>	<u>1900*</u>
<u>Selenium (Se)</u>	<u>26</u>	<u>180</u>
<u>Zinc (Zn)</u>	<u>420</u>	<u>2900*</u>

Footnote: * Only applies when not guaranteed.

(a) Fertilizers and soil amendments such as compost, manures and manipulated manures or other organic matter, separately or in combination with sewage sludge, even those products making nutrient claims, are exempt from the table above, but are adulterated when the levels of ~~arsenic, cadmium or lead~~ metals exceed the levels permitted in 40 CFR 503.

(b) remains the same.

(c) Micronutrients can include iron, manganese, zinc, copper, molybdenum, boron, cobalt, ~~chlorine, nickel, and selenium~~ sodium.

(d) through (iv) remain the same.

(4) Fertilizers and soil amendments are adulterated when the end product contains:

(a) Sewage sludge and the levels of ~~arsenic, cadmium or lead~~ metals exceed the levels permitted in 40 CFR 503;

(b) remains the same.

(c) Hazardous waste and the levels of ~~arsenic, cadmium, or lead~~ metals in the waste component exceed the levels permitted in 40 CFR 261, 266, and 268.

(5) and (6) remain the same.

(7) Testing methodology used by the department in analyzing metal content for the end product will be for the intent of discovering the total metal content of a fertilizer or soil amendment product. Such methodology includes AOAC Official Method 2006.03 (Arsenic, Cadmium, Cobalt, Chromium, Lead, Molybdenum, Nickel, and Selenium in Fertilizers) ~~laboratory test results from either sample preparation method 3050B or 3051 as described in US EPA Publication SW-846 (third edition, update III, December 1996)~~ or other comparable methods approved by the department.

(8) and (9) remain the same.

~~(10) The department will implement this rule starting July 1, 2003.~~

AUTH: 80-10-301, MCA

IMP: 80-10-205, MCA

REASON: The department is adding six nonnutritive metals and their respective standards to the current list of three nonnutritive metals for which levels have been determined for considering fertilizers and soil amendments adulterated. The metals and respective levels are the same as those published by the Association of American Plant Food Control Officials. Adoption of these metals and

their respective standards will align Montana standards with national model regulations and help to protect Montana's consumers and environment.

The department is also updating the methodology standards by which nonnutritive metals are tested and measured.

FISCAL IMPACT: There will be no fiscal impact for this rule.

4.12.621 REGISTRATION (1) through (6) remain the same.

~~(7) The department will implement this rule starting July 1, 2003.~~

AUTH: 80-10-301, MCA

IMP: 80-10-201, MCA

REASON: General housekeeping.

FISCAL IMPACT: There will be no fiscal impact for this rule.

4. The department proposes to repeal the following rules:

4.12.603 LICENSING EXEMPTION

AUTH: 80-10-301, MCA

IMP: 80-10-212, MCA

REASON: During the 2009 legislative session, Montana's Commercial Fertilizer Act was amended to align state regulations more closely to the current national model regulations and to promote uniformity between states. The repealing of this rule is necessary to align this administrative rule with updated statutory amendments.

FISCAL IMPACT: There will be no significant fiscal impact for this rule (less than \$2,000).

4.12.605 INSPECTION, SAMPLING AND ANALYSIS

AUTH: 80-10-301, MCA

IMP: 80-10-206, MCA

REASON: During the 2009 legislative session, Montana's Commercial Fertilizer Act was amended. The information within this rule was detailed within statute and requires no further explanation in rule. Thereby, it is proposed that this rule be repealed.

FISCAL IMPACT: There will be no fiscal impact for this rule.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; telephone (406) 444-3144; fax: (406) 444-5409; or e-mail: agr@mt.gov, and must be received no later than 5:00 p.m. on July 22, 2010.

6. Cort Jensen, Department of Agriculture, has been designated to preside over and conduct this hearing.

7. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail, and mailing address of the person and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

8. An electronic copy of this Notice of Proposed Amendment is available through the department's web site at www.agr.mt.gov, under the Administrative Rules section. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by regular mail, e-mail, and phone on June 7, 2010. For previous rule projects involving the same bill, the primary sponsor was given appropriate notice.

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, June 14, 2010.